

Legislative Analysis



FREEDOM OF INFORMATION: FEES FOR RECORDS AND COPIES

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House Bill 4001

Sponsor: Rep. Mike Shirkey

Committee: Oversight

Complete to 5-13-13

A SUMMARY OF HOUSE BILL 4001 AS INTRODUCED 1-9-13

House Bill 4001 would amend the Freedom of Information Act to set statewide standards that would govern the costs for reproducing records requested under the Freedom of Information Act. A more detailed description of the bill follows.

Now under the law, a public body can charge a fee for a public record search, the necessary copying of public records for inspection, or for providing a copy of the record. The fee is limited to actual mailing costs and to the actual incremental cost of duplication or publication, including labor, the costs of search, examination, review, and the sorting of exempt from non-exempt information. Also, a public body can require at the time of an FOIA request a good-faith deposit from the requestor if the fee exceeds \$50, although that deposit cannot exceed one-half of the total fee. House Bill 4001 would change these provisions as follows.

** Under House Bill 4001 a public body could not charge more than 10 cents a page when copying a public record.

** Also, a public body would have to permit and would be prohibited from charging a fee for copying during an on-site inspection of public records, unless the requestor asked the public body to provide the copies or used the public body's copying equipment.

Now under the law, generally speaking, a public body must respond to a request for a public record within five business days by granting the request, issuing a written notice denying the request, granting the request in part and denying the request in part, or issuing a notice extending for up to 10 business days the period in which to respond. If a public body denies a request in whole or in part, the requesting person can appeal the decision to the public body or can begin an action in circuit court.

House Bill 4001 would retain those provisions, but would add that if a public body does not deny a request for records but fails to make the requested records available for inspection or to provide a copy of the requested records within the deadline, then the fee that can be charged would be reduced by 20 percent of the original fee each day after the deadline that the record or copy is not made available. A public body could not charge a fee for a record produced more than five days after the deadline. The bill specifies, however, that deadlines would be extended and no charge reduction would be required if

a deposit remained unpaid, except that while an appeal requesting a fee reduction was pending, the required deposit could not exceed \$500.

House Bill 4001 also specifies that if a public body imposed a fee in excess of that permitted, the requestor could submit a written appeal for a reduction in the fee, in the same way that the requestor can currently appeal a denial of all or a portion of a request. Within 10 days after receiving a written appeal, the head of a public body would have to uphold the amount of the fee, grant the requested fee reduction, or grant a partial fee reduction and issue a written notice to the requesting person indicating the basis for supporting the fee.

Currently, as an alternative to appealing a denial of all or a portion of a request, the requestor can begin an action in the circuit court. House Bill 4001 would similarly specify that if the amount of the fee exceeded 10 cents per page, or if the fees for search, examination, review, and deleting and separating exempt from non-exempt information exceeded \$100 cumulatively for all requests submitted by a requestor to a public body during a six-month period, then the requester could begin an action in the circuit court for a fee reduction within 180 days of the public body's notification to the person of the fee amount.

Under the bill, when a requestor has made an appeal to the circuit court to resolve contested exemptions, a public body could not assert an exemption that it did not assert in either denying a request for a document or in establishing a fee.

Currently in the act, if a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in a court action, the court must award reasonable attorney fees, costs, and disbursements. House Bill 4001 would extend this to issues of fee reduction. It also would make the provision apply when a person prevails "in all or part" in the court action.

Further, the bill would eliminate a provision that says: "If the person *or public body* prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorney's fees, costs, and disbursements."

Finally, now under the law, if a circuit court determines a public body has arbitrarily and capriciously violated the Freedom of Information Act by refusal or delay in disclosing or providing copies of a public record, then the court must award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500, to the person seeking the right to inspect or receive a copy of a public record. House Bill 4001 would increase the amount of punitive damages that must be awarded by the circuit judge from \$500 to \$5,000.

MCL 15.234, 15.235, 15.240

FISCAL IMPACT:

Collectively, the provisions of House Bill 4001 would lower the reimbursement revenues to public bodies complying with Freedom of Information Act (FOIA) requests. The bill would prevent a public body from charging more than 10 cents per page when copying a

public record. Additionally, if a public body did not meet the statutory deadline in complying with the request, the fee charged would be reduced by 20 percent each day after the deadline. If provided more than five days after the deadline, no fee could be charged. The extent of the fiscal impact would depend on the number of requests received and the timing of the response to those requests.

The provisions of the bill that eliminate the public body's ability to recover reasonable attorney's fees, costs, and disbursements and increase the punitive damages from \$500 to \$5,000 would also negatively impact a public body if they were impacted by these provisions.

To the extent that the provisions of the bill lower FOIA request charges, the requestor would realize a corresponding positive fiscal impact.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.